



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNR, MT, OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with cross applications. The tenant applied to dispute a Notice to End Tenancy for Unpaid Rent and more time to make the application. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, loss of rent and authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Procedural and Preliminary Matters

The tenant requested more time to file this application. Based upon statements of the tenant and information available to me on the file I note the following occurrences. The tenant received the 10 Day Notice to End Tenancy on September 30, 2012 and went to the Service BC centre to dispute the Notice on October 1, 2012. The tenant proceeded to obtain income verification from Income Assistance which was processed on October 3, 2012. That document was sent to Service BC for further processing; however, there was miscommunication or misfiling on part of the Service BC staff which resulted in the tenant's application being completed much later on October 18, 2012. The tenant then sent her application to the landlord on October 19, 2012. Given the circumstances I find the tenant took reasonable steps and had a reasonable belief that her application had been filed and processed within the time limit provided under the Act. Therefore, I find the tenant did file to dispute the application within the time limit and I proceeded to consider her application.

The landlords filed their application on October 19, 2012 and picked up the hearing package at the Service BC centre on October 22, 2012. The landlords sent the landlord's hearing package to the tenant the same day using the tenant's postal box address. The tenant claimed she did not receive the landlord's package or a notification card for registered mail. I confirmed that the landlords used the tenant's correct postal address. A search of the registered mail tracking number showed that the registered

mail was held until November 20, 2012 when it was declared to be “unclaimed” by Canada Post.

The Act provides that registered mail is deemed to be received five days after mailing so that a party cannot avoid service by failing or refusing to pick up their registered mail. I found the landlords had sufficiently served the tenant with the landlord’s hearing package and I proceeded to hear the landlords’ application.

### Issue(s) to be Decided

1. Should the Notice to End Tenancy be upheld or cancelled?
2. Is the landlord entitled to a Monetary Order for unpaid rent and loss of rent?
3. Is the landlord authorized to retain the tenant’s security deposit?

### Background and Evidence

The following information was undisputed:

- The month-to-month tenancy commenced June 1, 2012;
- The tenant paid a \$450.00 security deposit;
- The tenant is required to pay rent of \$900.00 on the 1<sup>st</sup> day of every month;
- The tenant failed to pay rent for September 2012; and,
- The tenant has not paid the outstanding rent or any rent for subsequent months and continues to occupy the rental unit.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on September 27, 2012 indicating the tenant failed to pay rent of \$900.00 on September 1, 2012. The landlord posted it on the tenant’s door on September 29, 2012. The tenant received the Notice September 30, 2012. The stated effective date on the tenant’s copy of the Notice was October 6, 2012. The landlord’s copy of the Notice indicated the tenant had until October 10, 2012 to vacate but all other parts of the Notice were identical to the tenant’s copy. The landlord explained that she had agreed to give the tenant a few extra days to vacate.

The tenant submitted that her Income Assistance payments were terminated because she had not filed the documentation for her 2009 tax return. The tenant has been working to get her Income Assistance restored and has been advised that she will have rent monies available to her December 6, 2012. The tenant filed this application to gain more time to resolve the welfare dispute and gather the funds to pay the rental arrears.

The landlord requested an Order of Possession as soon as possible. The landlord initially requested compensation for unpaid rent and loss of rent for September 2012 through mid-November 2012; however, given the date of this hearing the landlord verbally requested her application be amended to include loss of rent for the entire month of November 2012.

### Analysis

The Act requires that a tenant pay rent when due in accordance with the terms of their tenancy agreement and the Act. The Act provides for specific exemptions from the requirement to pay rent; however, changes in income or other personal circumstances do not form a basis to withhold rent from the landlord. A tenant's failure to pay rent entitles the landlord to issue a 10 Day Notice.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. In this case, I have accepted that the tenant failed to dispute the Notice within the time limit; however, I find the tenant's dispute with Income Assistance or other personal circumstances are not a legal basis to cancel the Notice under the Act.

In light of the above, I uphold the Notice and find that the tenancy has ended. Accordingly, the landlords are entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

I am satisfied by the undisputed evidence that the landlords are entitled to unpaid rent for September 2012 and October 2012. I am further satisfied that the tenant's continued occupation of the rental unit has caused the landlord to incur a further loss of rent for the month of November 2012. Given the date of this proceeding and the anticipated days before the landlords may regain possession of the rental unit I award the landlords loss of rent for the entire month of November 2012.

I authorize the landlords to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlords. I also award the landlords the filing fee paid for this application.

Based upon the foregoing, the landlords are provided a Monetary Order calculated as follows:

Unpaid/loss of rent: September – November 2012	\$ 2,700.00
Filing fee	50.00
Less: security deposit	<u>(450.00)</u>
Monetary Order	\$ 2,300.00

The landlords must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlords have been provided an Order of Possession effective two (2) days after service upon the tenant. The landlords have been authorized to retain the security deposit and have been provided a Monetary Order for the balance of \$2,300.00 to serve upon the tenant and enforce as necessary.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 22, 2012.

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Residential Tenancy Branch